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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,949	10/23/2000	Paul Price	0942.4120005/RWE/BJD	5489
26111	7590	12/29/2003	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

**Advisory Action****Application No.**

09/693,949

**Applicant(s)**

PRICE ET AL.

**Examiner**

Susan Coe

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 24 November 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-13, 18-21, 26, 29-32 and 34-38.Claim(s) withdrawn from consideration: 39 and 40.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### **SUPPLEMENT TO ADVISORY ACTION**

1. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Applicant's arguments regarding the double patenting rejection are noted. Previously applicant has not traversed the double patenting rejection, stating that applicant was willing to file a terminal disclaimer. Since prosecution is now closed in this case, it is inappropriate for applicant to raise new arguments to a previously accepted rejection.
3. All of applicant's arguments regarding the 102 rejection over DIFCO manual (1984) in light of Dyas et al. have been fully considered but are not persuasive. Applicant argues that the DIFCO media would not be capable of supporting the growth of animal cells. However, applicant has not demonstrated this sufficiently to remove the rejection. Applicant has not shown any hard evidence to show that the DIFCO media is not capable of support animal cell growth. It would be persuasive if applicant would demonstrate experimentally that the DIFCO media is physically not capable of supporting the growth of animal cells. But since applicant has not shown this, the DIFCO media is still considered to anticipate the stated claims.
4. All of applicant's arguments regarding the 103 rejection over DIFCO manual (1984) in light of Dyas et al. (Phytochemistry (1994), vol. 35, no. 3, pp. 655-660) in view of Gibco BRL Life Technologies, Gaithersburg, MD, 1993-1994 Catalogue and Reference Guide pp. 1-105 through 1-107, 1-115 through 1-116, 1-123, 4-49, 4-50, 4-61, and 4-63, have been fully considered but are not persuasive. Applicant argues that the references are non-analogous prior

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art. However, both references teach media that can be used to cultivate the same types of cells.

Thus, they are considered to be analogous.

In addition, applicant argues that the different ingredients are not all used for the same purpose. However, all of the ingredients are used to make a cell culture media that is capable of supporting the growth of cells *in vivo*. Thus, they are considered to be used for the same overall purpose.

5. All of applicant's arguments regarding the 103 rejection over US Pat. No. 5,122,469 in view of Dyas et al. (Phytochemistry (1994), vol. 35, no. 3, pp. 655-660) and Gibco BRL Life Technologies, Gaithersburg, MD, 1993-1994 Catalogue and Reference Guide pp. 1-105 through 1-107, 1-115 through 1-116, 1-123, 4-49, 4-50, 4-61, and 4-63 have been fully considered but are not persuasive. Applicant's arguments in regards to the election of species requirement are noted. This requirement has not been traversed in the past. After-final is not an appropriate point in prosecution to raise these arguments.

In addition, applicant argues that the use of potato would create a different product. However, applicant has not provided any hard data to support that their media is actually different from the media in US '469. Thus, the two media appear to be the same for the reasons stated in the previous Office action.

6. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
December 17, 2003



FRANCISCO PRATS  
PRIMARY EXAMINER